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Marvin Rosenberg
202 457 7147
marvin.rosenberg@hklaw.com

July 12, 2004

VIA HAND DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex-Parte Presentation
MB Docket No. 03-206

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1)(2) of the Federal Communications Commission's Rules, this to advise that on July 9, 2004 a written ex-parte presentation was made by Dominion Video Satellite, Inc. ("Dominion") to W. Kenneth Ferree, Chief, Media Bureau, and Rosalee Chiara, Public Interest Obligations of Satellite/DBS Licensees, Media Bureau. A copy of the written presentation is submitted herewith.

Very truly yours,


Marvin Rosenberg

cc: W. Kenneth Ferree, Esq.
Rosalee Chiara

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Marvin Rosenberg
202 457 7147
marvin.rosenberg@hklaw.com

July 9, 2004

Kenneth M. Scheibel, Jr.
Investigations & Hearing Division
Enforcement Bureau
Federal Communications Division
445 12th Street, SW
Room A-325
Washington, DC 20554

Re: EB-04-IH-0140
Facility ID No. 24436

Dear Mr. Scheibel:

Pursuant to the Enforcement Bureau's May 28, 2004 *Letter of Investigation* to Word of God Fellowship, Inc. d/b/a the Daystar Television Network (referred to herein as "Daystar,") Dominion Video Satellite, Inc. ("Dominion") respectfully replies to Daystar's July 28, 2004 response letter ("*Response*"), which was received by Dominion's counsel on June 29, 2004.

- 1. Rather than responding to the Enforcement Bureau's questions, Daystar raises irrelevant issues.**

Consistent with its pattern of ignoring Commission requirements, in its *Response*, Daystar flippantly dismisses the bulk of the inquiries set forth in the Bureau's *Letter of Investigation*, refusing to answer the Bureau's Question Nos. 1 through 7 and declaring them to

be “irrelevant.” (*Response*, p. 4.)¹ Ironically, Daystar then spends much of its *Response* raising points that are not germane to the central, and only, question in this matter — whether Daystar’s commercial activities on its noncommercial licensed stations violate Commission Rules.

First, Daystar spends an inordinate amount of time insisting that the “Daystar Television Network” is simply a service mark of the Word of God Fellowship, Inc. and not itself a separate legal entity. (*Response*, pp. 1-2.) But Daystar does not deny that it holds itself out as the Daystar Television Network, nor does it deny that the noncommercial broadcast television stations listed in footnote one of the Bureau’s *Letter of Investigation* carry Daystar programming. Indeed, Marcus Lamb confirms that he is the President of each station enumerated in the Commission’s *Letter*,² and the stations are identified as Daystar stations on the Daystar web page and in Daystar advertising. Daystar’s discussion on this point is thus wholly irrelevant and unnecessary.

Second, Daystar’s comments about the legal proceedings between Dominion and EchoStar Satellite Corp. (“EchoStar”) do not assist the Commission in determining the nature of Daystar’s commercial programming, and thus are also totally irrelevant as to whether Daystar’s operation is compliant with FCC rules. Daystar’s *Response* contains many misrepresentations and half-truths about the Dominion-EchoStar litigation. For example, see Marcus Lamb’s Declaration in the California proceeding cited in footnote 3 in which Marcus Lamb misstates the actions between Dominion and the National Religious Broadcasters association. (Exhibit 2 hereto.) Dominion will not waste further space by addressing these irrelevant statements.

Third, ~~Daystar~~ complains at length about “the FCC’s historic institutional antipathy toward religious broadcasters as licensees of non-commercial educational broadcast stations,” and suggests that the FCC’s action to investigate a violation of its rules violates Daystar’s First Amendment rights. This is ridiculous. The Bureau’s letter is not directed to program content, but instead seeks information needed to determine whether Daystar’s operation complies with the Commission rules applicable to *all* noncommercial licensees, not just religious broadcasters.

¹ Daystar refuses to respond to these inquiries based on its tortured interpretation of “advertising.” (*Response*, p. 4.)

² Daystar’s *Response* raises the question of whether the individual station licensees that are owned by Daystar comply with the Commission’s requirement that station principals be broadly representative of the educational, cultural and civic groups in the community of license. See Way of the Cross of Utah, Inc., 58 R.R. 2d 455 (1085). Considering the ownership reports on file with the Commission and the statements of Marcus Lamb in recent Declarations, these licensees appear to be dominated by Marcus Lamb and parties from Dallas, Texas rather than from the stations’ local communities. See Declarations of Marcus Lamb in, Word of God Fellowship, Inc. v. Coast Community College District, Superior Court of California, County of Orange-Central District, Case No. 04CC03347 (2004) (Exhibit 1 hereto).

The Enforcement Bureau's questions to Daystar are a valid inquiry into whether Daystar's commercial activities violate Commission Rules. The FCC should not permit Daystar to refuse summarily to respond to these questions simply because it deems them "irrelevant."³

2. Daystar hides behind its nonprofit 501(c)(3) tax status to justify commercial activities.

Seeking to justify plainly commercial broadcasting activities, Daystar attempts to hide behind its status as a 501(c)(3) non-profit organization. (*Response*, pp. 3-5.) Daystar makes four arguments based on its status as a non-profit:

- (1) That Daystar only sells its airtime to other non-profit entities (*Id.* at 3);
- (2) That the remuneration from the products sold by certain third parties on Daystar's in-house productions are "donated" back to Daystar (*Id.*);
- (3) That the profits from products sold on Daystar are "donated" back into the nonprofit entity that sold them in the first place (*Id.*); and
- (4) That the individual noncommercial stations owned by Daystar receive all their remuneration from Daystar, itself a nonprofit entity. (*Id.* at 4.)

These arguments miss the point. The entities from which Daystar receives revenue — whether they themselves are for-profit or not — are engaging in commercial activities on Daystar's "noncommercial" licensed stations. That these entities may, like Daystar, classify the remuneration they receive as "charitable contributions" does not change the fact that Daystar receives money for airtime that is used to promote products in exchange for money. Daystar's 501(c)(3) tax status should not immunize it from Commission scrutiny for its violation of the FCC's noncommercial-station rules.

For example, whether Without Walls International Church, Inc. is or is not a 501(c)(3) nonprofit is irrelevant to whether Daystar's presentation of the "Paula White Today" program violates FCC rules.⁴ Indeed, the Enforcement Bureau directly questioned Daystar about the

³ Nor should the Commission permit Daystar to refuse to produce documents requested in the *Letter of Investigation*. The last exhibit submitted by Daystar is the Declaration of Marcus Lamb. In his Declaration, Lamb states that all of the information and relevant documents in the Corporation's possession that were requested by the Bureau's letter have been produced. However, it would be reasonable to expect that the agreements requested by the Bureau in questions 5(f), 7 (d), 7(e) and (10) would be within the corporation's possession and those agreements have not been produced.

⁴ Daystar's arguments regarding the Mike Murdock Ministry fail for the same reason — simply having 501(c)(3) tax status does not by itself establish that no activities prohibited by the FCC's rules occurred.

"Paula White Today" program by including a tape of the May 25, 2003 program with its *Letter of Investigation* and asking Daystar to provide information about the broadcast, but Daystar has refused to do so.

Nor can Daystar avoid the ban on commercial activity by characterizing the money it receives for airtime and product sales as "donations." First, the health products offered for sale by Ted Broer on Daystar's "Celebration" were originally being sold directly by Dr. Broer's staff, not by Daystar. (See Exhibit H to Daystar's *Response*, ¶¶ 7 & 8.) Indeed, Broer admits that he deducted the cost of the products, as well as administration and handling fees, from the money Daystar viewers paid for the products, but provides no details about what items he characterized as "deductions." Accordingly, a commercial entity may well have directly profited from offering the goods, or from the advertising of commercial products. Moreover, this program was replayed with Daystar's own telephone number covering Broer's number and Daystar's own operators taking orders. Broer also admits that Daystar received remuneration for selling the products on the air. (*Id.* ¶ 9.) The fact that this money is characterized as a "donation" does not change the fact that Daystar promoted and received money for the commercial products on its noncommercial licensed stations.

3. Daystar continues to flaunt the Commission's noncommercial licensee rules.

Further investigation by Dominion reveals that Daystar continues to brazenly engage in commercial activities on its noncommercial licensed stations, and that many of Daystar's factual assertions are inaccurate. For example, on the May 25 "Paula White Today" program, Peter Lamas is plainly promoting the sale of his products. Daystar insists that this is acceptable because the entity selling the products is a nonprofit organization. (*Response*, p. 3.) To investigate the matter, a Dominion representative ordered certain Peter Lamas Products from the Paula White Ministries, but the purchase price was not tax deductible. (See Declaration of Kathleen Johnson, Exhibit 3 hereto, ¶ 13); see also Exhibit 4 hereto (receipt indicating that purchase is not tax deductible).)

It is also plain from Daystar's recent programming that the Enforcement Bureau's *Letter of Investigation* did nothing to deter Daystar from engaging in commercial activities under its noncommercial licenses. For example, on June 18, 2004, the program "Joni" — a Daystar-produced program starring Lamb's wife and co-founder of Daystar, Joni — contained an interview of an individual, Valerie Saxion, engaged in a commercial venture with a direct announcement for Saxion's products. Ms. Saxion, however, in a call with one of Dominion's officers, indicated that her company is a for-profit entity, that Daystar receives 20% of each sale to a Daystar viewer who calls the telephone number shown on "Joni", the June 18 program was a repeat of an earlier show, and was to be broadcast four times. (Exhibit 3 hereto, ¶¶ 5-10.)⁵ Also enclosed for the Commission's review are copies of the June 18, 2004 "Joni" program (Exhibit 5 hereto.) and the June 13, 2004 "Paula White Today" program, which is substantively identical

⁵ Ms. Lamb not only hosts the program but is an officer and/or a member of the board of directors of the Daystar noncommercial stations, and therefore has an independent responsibility to see that the Daystar stations operate in accordance with FCC rules.

to the earlier program, and amounts to nothing less more than a program-length infomercial. (Exhibit 6 hereto.)

The Declaration of Janice E. Smith — Daystar's Vice President of Programming — raises more questions than it answers. (Exhibit I to Daystar *Response*.) Smith opines that a non-profit entity "cannot sell products, but rather, they can offer product[s] and ask for a donation to the ministry for the product." (*Id.*) Under Smith's definitions, one could conclude that an "offer" of a product for a "donation" is permissible under FCC rules, but to "sell products" violates the rules. Whether you "offer" or "sell" in exchange for consideration, the result is the same — product for cash. Smith also acknowledges that Daystar offers to sell spot time to non-profit ministries. (*Id.*)

Finally, a review of the Contract Checklist attached to Daystar's *Response* demonstrates the commercial nature of Daystar's programming sales. (Exhibit K to Daystar *Response*.) The Checklist requires all applicants to complete credit check forms and return them with the contract, and the contract is subject to credit approval. Further, the Checklist provides that a check for a one-month deposit be included with the forms and contract. Contributions to a religious or charitable institution do not normally require a contract, a credit check, and a one-month deposit. In contrast, it is normal to require these items when a station is selling commercial time. Indeed, the Daystar Sample Underwriting Agreement (Exhibit Q to Daystar *Response*) makes clear that Daystar engages in the sale of program time, regardless of what it calls the payment, by requiring a minimum "\$175.00/week Net to Station" for the broadcast of program material. The fact that Daystar has a set rate (which it calls a "donation") for the sale of air time (which it calls "program material") establishes the fundamentally commercial nature of Daystar's operation.

The evidence shows that Daystar has engaged in a clear pattern of abusing the FCC's rules governing the operation of noncommercial television stations. Its *Response* dodges the Commission's questions and attempts to couch its commercial activities in nonprofit jargon. But whatever Daystar calls its practices, it is plain that Daystar sells program time and announcements, it sells products, it sells time to others who sell products, and it sells commercial television stations and acquires noncommercial stations which it then operates as commercial stations.⁶ The Commission should not allow Daystar to continue violating the rules that govern

⁶ Noncommercial educational television station KDTN, Denton, Texas was acquired (\$20,00,00.00) and commercial television station KMPX, Decator, Texas was sold (\$37,500,000) in the Dallas-Ft. Worth DMA.

Kenneth M. Scheibel, Jr

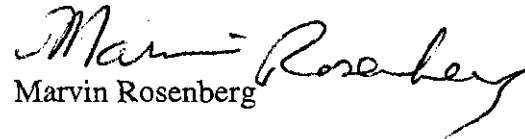
July 9, 2004

Page 6

all noncommercial broadcasters, and should require Daystar to fully and completely respond to all the questions set forth in the Enforcement Bureau's *Letter of Investigation*.

Sincerely yours,

HOLLAND & KNIGHT LLP


Marvin Rosenberg

cc: Robert Olender, Esq
Pantelis Michalopoulos, Esq.
W. Kenneth W. Ferree, Esq.
Rosalee Chiara

EXHIBIT 1

**DECLARATION OF MARCUS LAMB AND
SUPPLEMENTAL DECLARATION OF MARCUS LAMB**

1 **STATE OF CALIFORNIA**
2 **COUNTY OF LOS ANGELES** } ss.

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is: 9454 WILSHIRE BLVD., SUITE 820,
5 BEVERLY HILLS, CALIFORNIA 90212.

6 On April 7, 2004, I served the foregoing Documents: **PETITIONER'S REPLY TO**
7 **KOCE FOUNDATION'S OPPOSITION TO PETITION FOR WRIT OF**
8 **MANDATE/PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM**
9 **OF POINTS AND AUTHORITIES; DECLARATION OF MARCUS LAMB IN SUPPORT**
10 **THEREOF**, upon the interested parties in this action in a sealed envelope addressed as follows:

11 MILFORD W. DAHL, JR., ESQ.
12 RUTAN & TUCKER, LLP
13 611 Anton Boulevard
14 Suite 1400
15 Costa Mesa, California 92628
16 Phone: (714) 641-3438
17 Fax: (714) 546-9035

SCOTT CARPENTER, ESQ.
PALMIERI TYLER WIENER
WILHELM & WALDRON, LLP
2603 Main Street, Suite 1300
Irvine, California 92614
Phone: (949) 851-7243
Fax: (949) 757-1225

- 13 ☐ (By Mail [Federal]) I placed such envelope with postage thereon fully prepaid in the
14 UNITED STATES POSTAL SERVICE at Beverly Hills, California.
- 15 ☐ (By Mail [State]) I am readily familiar with the practice for the collection and
16 processing of correspondence for mailing with the UNITED STATES POSTAL SERVICE ;
17 such envelope will be deposited with the UNITED STATES POSTAL SERVICE on the above
18 date according to ordinary business practices.
- 19 ☐ (Via Mail or Certified Mail - Return Receipt Requested [State]) I am readily familiar
20 with the practice for the collection and processing of correspondence for mailing with the
21 UNITED STATES POSTAL SERVICE ; such envelope will be deposited with the UNITED
22 STATES POSTAL SERVICE on the above date according to ordinary business practices.
- 23 ☐ (Via Facsimile [State]) By transmitting from my business address a true copy thereof
24 from sending facsimile machine (310) 246-0305 addressed to each individual at its
25 facsimile telephone number set forth above at the time indicated on the transmission
26 verification sheet attached hereto.
- 27 ☒ (Via Personal Service) I caused such documents to be personally delivered in an
28 envelope to the addressees shown above by and through, Dependable Messenger Service,
Inc., 8132 Orion Avenue, Van Nuys, California 91406.
- ☒ Executed on April 7, 2004, at Beverly Hills, California.
- ☒ (State) I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.


ALEJANDRA LOPEZ

DECLARATION OF MARCUS LAMB

I, Marcus Lamb, am President and Chief Executive Officer of Word of God Fellowship, Incorporated d.b.a. Daystar Television Network also known as Community Television Educators of Orange County, Inc. ("**Daystar**"), the Petitioner in the above-captioned proceeding. The facts described below are personally known to me and if called upon as a witness I would testify as follows:

1. I hereby reaffirm and incorporate by this reference as though fully set forth at length herein every statement I made in my previous declaration submitted in support of Daystar's Petition for Writ of Mandate/Prohibition or Other Appropriate Relief (the "**Petition**"), filed and served on or about February 25, 2004.

2. In the auction for television station KOCE-TV ("**KOCE**"), both of Daystar's bids were submitted by and on behalf of Daystar, with the actual contracting party to be Community Television Educators of Orange County, Inc. ("**CTEOC**"), a non-profit California corporation to be formed and capitalized in the event that Daystar prevailed in the auction. If Daystar did not prevail in the auction, there obviously would have been no purpose for forming CTEOC.

3. It is a standard, proper and commonplace practice in the broadcasting industry for a media conglomerate such as Daystar, which owns and operates several television stations, to hold F.C.C. licenses for each of its stations under different entities to be formed and capitalized upon acquisition of each of said stations, for the sole purpose of owning and operating said stations. As long as the entity is formed prior to the time the F.C.C. license is to be transferred, it is proper to negotiate a purchase agreement prior to and in anticipation of the entity's formation.

4. Based on the advice of Daystar's F.C.C. attorneys, coupled with my experience in the broadcasting industry and my acquisition and ownership of eight (8) local non-commercial television stations similar to KOCE, it is my understanding of the F.C.C.'s laws and regulations

1 that F.C.C. licenses for local non-commercial television stations must be held by a licensee local
2 to the market served by the station, with the majority of the board members of such licensee to be
3 comprised of local individuals who are publically active in educational, artistic, civic or cultural
4 activities. As Daystar does not presently own or control any California subsidiaries, it would be
5 necessary for Daystar to form CTEOC in order to contract for the purchase of KOCE, which
6 would require me to develop trusted and qualified contacts in Orange County to assemble a
7 board. Under the F.C.C.'s regulations, neither Daystar nor any of its existing subsidiaries would
8 be permitted by the F.C.C. to purchase and own KOCE.
9

10
11 5. At all relevant times during the auction, neither Respondent Coast Community
12 College District ("CCCD"), Media Venture Partners, nor any other person or entity questioned or
13 rejected either of Daystar's bids on the count of CTEOC not yet existing, nor did anyone ever
14 raise this issue in determining whether Daystar was a responsible bidder.

15 6. At all relevant times during the auction, I have been aware of CCCD's preference
16 in retaining the college district's educational telecourses to continue to be broadcast over KOCE
17 after the sale. Accordingly, all of Daystar's proposals have provided that 25% of the bandwidth
18 of the station would continue to carry such programming.
19

20
21 I declare under penalty of perjury under the laws of the State of California and the State
22 of Colorado that the foregoing is true and correct. Executed this 7th day of April 2004 in Denver,
23 Colorado.
24

25
26
27 _____
28 Marcus Lamb

SUPPLEMENTAL DECLARATION OF MARCUS LAMB

I, Marcus Lamb, hereby declare and state as follows:

1. I am President and Chief Executive Officer of Word of God Fellowship, Incorporated d.b.a. Daystar Television Network also known as Community Television Educators of Orange County, Inc. ("**Daystar**"), the Petitioner in the above-captioned proceeding. The facts described below are personally known to me and if called upon as a witness I would testify as follows:

1. I hereby reaffirm and incorporate by this reference as though fully set forth at length herein every statement I made in my previous declaration submitted in support of Daystar's Petition for Writ of Mandate/Prohibition or Other Appropriate Relief (the "**Petition**"), filed and served on or about February 25, 2004.

2. In the auction for television station KOCE-TV ("**KOCE**"), both of Daystar's bids were submitted by and on behalf of Daystar, with the actual contracting party to be Community Television Educators of Orange County, Inc. ("**CTEOC**"), a non-profit California corporation to be formed and capitalized in the event that Daystar prevailed in the auction. If Daystar did not prevail in the auction, there obviously would have been no purpose for forming CTEOC.

3. It is a standard, proper and commonplace practice in the broadcasting industry for a media conglomerate such as Daystar, which owns and operates several television stations, to hold F.C.C. licenses for each of its stations under different entities to be formed and capitalized upon acquisition of each of said stations, for the sole purpose of owning and operating said stations. As long as the entity is formed prior to the time the F.C.C. license is to be transferred, it is proper to negotiate a purchase agreement prior to and in anticipation of the entity's formation.

///

///

///

1 4. Through my experience in the broadcasting industry and my acquisition and
2 ownership of eight (8) local non-commercial television stations similar to KOCE, it is my
3 understanding of the F.C.C.'s laws and regulations that F.C.C. licenses for local non-commercial
4 television stations must be held by a licensee local to the market served by the station, with the
5 majority of the board members of such licensee to be comprised of local individuals who are
6 publically active in educational, artistic, civic or cultural activities. As Daystar does not
7 presently own or control any California subsidiaries, it would be necessary for Daystar to form
8 CTEOC in order to contract for the purchase of KOCE, which would require me to develop
9 trusted and qualified contacts in Orange County to assemble a board. Under the F.C.C.'s
10 regulations, Daystar Television Network, Word of God Fellowship, Inc. or any other existing
11 subsidiary would not be permitted by the F.C.C. to purchase and own KOCE.
12

13 5. At all relevant times during the auction, neither Respondent Coast Community
14 College District ("**CCCD**"), Media Venture Partners, nor any other person or individual
15 questioned or rejected either of Daystar's bids on the count of CTEOC not yet existing, nor did
16 anyone ever raise this issue in determining whether Daystar was a responsible bidder.
17

18 6. Apart from Daystar's operative bid and Real Party In Interest KOCE Foundation's
19 (the "**Foundation**") accepted bid, no other person or entity participating in the auction submitted
20 a competitive bid, with the exception of Proyecto Para Adelantar La Gente, Inc. ("**PAPPAS**") and
21 Alnavision Hispanic Network ("**Alnavision**"), which were both disqualified from the auction
22 for the following reasons:
23

24 a. PAPPAS failed to submit an initial bid in the first round of bidding, so its
25 bid of Twenty Five Million One Hundred Dollars (\$25,100,000) was accordingly disqualified
26 and dismissed from the bidding process in the second round. PAPPAS was also disqualified
27
28

1 because it is considered to be a "full-profit broadcaster" and does not own or control a non-profit
2 subsidiary as required by the F.C.C. to own and operate a non-commercial station such as KOCE.

3 b. Almavision's Thirty Five Million Dollar (\$35,000,000) bid was quickly
4 dismissed because Almavision was unable to provide Respondent with adequate proof of
5 financial capacity to back up its offer.
6

7 7. I am aware of the OCWeekly article submitted by Respondent in its Opposition
8 which references a complaint filed with the F.C.C. by Dominion Video Satellite ("*Dominion*")
9 against Daystar. To date, there has been no adjudication of the matters alleged in the complaint,
10 which consists merely of allegations. Nothing alleged in the Dominion complaint is remotely
11 relevant to Daystar's intended acquisition and operation of KOCE.
12

13 I declare under penalty of perjury under the laws of the State of California and the State
14 of Colorado that the foregoing is true and correct. Executed this 7th day of April 2004 in Denver,
15 Colorado.
16

17 _____
18 MARCUS LAMB
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

**DECLARATION OF MARCUS LAMB
AND NATIONAL RELIGIOUS BROADCASTERS CORRESPONDENCE**

1 **STATE OF CALIFORNIA**
2 **COUNTY OF LOS ANGELES** } ss.

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is: 9454 WILSHIRE BLVD., SUITE 820,
BEVERLY HILLS, CALIFORNIA 90212.

5 On April 14, 2004, I served the foregoing Documents: **DECLARATION OF**
6 **MARCUS LAMB IN SUPPORT OF PETITIONER'S REPLY TO RESPONDENT KOCE**
7 **FOUNDATION'S SUPPLEMENTAL OPPOSITION TO WRIT OF MANDATE /**
PROHIBITION, upon the interested parties in this action in a sealed envelope addressed as follows:

8 MILFORD W. DAHL, JR., ESQ.
9 RUTAN & TUCKER, LLP
611 Anton Boulevard
Suite 1400
10 Costa Mesa, California 92628
Phone: (714) 641-3438
11 Fax: (714) 546-9035

SCOTT CARPENTER, ESQ.
PALMIERI TYLER WIENER
WILHELM & WALDRON, LLP
2603 Main Street, Suite 1300
Irvine, California 92614
Phone: (949) 851-7243
Fax: (949) 757-1225

- 12 ☐ (By Mail [Federal]) I placed such envelope with postage thereon fully prepaid in the
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- 14 ☒ (By Mail [State]) I am readily familiar with the practice for the collection and
15 processing of correspondence for mailing with the UNITED STATES POSTAL SERVICE;
such envelope will be deposited with the UNITED STATES POSTAL SERVICE on the above
16 date according to ordinary business practices.
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18 with the practice for the collection and processing of correspondence for mailing with the
UNITED STATES POSTAL SERVICE; such envelope will be deposited with the UNITED
STATES POSTAL SERVICE on the above date according to ordinary business practices.
- 19 ☒ (Via Facsimile [State]) By transmitting from my business address a true copy thereof
20 from sending facsimile machine (310) 246-0305 addressed to each individual at its
facsimile telephone number set forth above at the time indicated on the transmission
verification sheet attached hereto.
- 21 ☐ (Via Personal Service) I caused such documents to be personally delivered in an
22 envelope to the addressees shown above by and through, Dependable Messenger Service,
Inc., 8132 Orion Avenue, Van Nuys, California 91406.
- 23 ☒ Executed on April 14, 2004, at Beverly Hills, California.
- 24 ☒ (State) I declare under penalty of perjury under the laws of the State of California
25 that the above is true and correct.

26
27 
28 ALEJANDRA LOPEZ

COPY

RICHARD LLOYD SHERMAN, ESQ. (STATE BAR NO. 106597)
KEN NATHANSON, ESQ. (STATE BAR NO. 077556)
CAMERON H. TOTTEN, ESQ. (STATE BAR NO. 180765)
SHERMAN & NATHANSON
9454 Wilshire Boulevard, Suite 820
Beverly Hills, California 90212-2929
Telephone: (310) 246-0321
Facsimile: (310) 246-0305

Attorneys for Petitioner WORD OF GOD FELLOWSHIP, INC.,
D.B.A. DAYSTAR TELEVISION NETWORK A.K.A. COMMUNITY TELEVISION
EDUCATORS OF ORANGE COUNTY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL DISTRICT

WORD OF GOD FELLOWSHIP,
INCORPORATED, A GEORGIA NON-PROFIT
CORPORATION, D.B.A. DAYSTAR TELEVISION
NETWORK A.K.A. COMMUNITY TELEVISION
EDUCATORS OF ORANGE COUNTY, INC.,

Petitioner,

v.

COAST COMMUNITY COLLEGE DISTRICT, a
political subdivision of the State of
California;

Respondent,

KOCE FOUNDATION, a California non-
profit public benefit corporation;

Real Party in Interest.

CASE NO. 04CC03347

**DECLARATION OF MARCUS LAMB
IN SUPPORT OF PETITIONER'S
REPLY TO RESPONDENT KOCE
FOUNDATION'S SUPPLEMENTAL
OPPOSITION TO WRIT OF
MANDATE/PROHIBITION**

DATE: APRIL 12, 2004
TIME: 9:00 A.M.
DEPT.: "C-8"

PETITION FILED ON: FEBRUARY 25, 2004

[Assigned to the Honorable Corey Cramins, Judge
Presiding, Department C-8]

DECLARATION OF MARCUS LAMB

I, Marcus Lamb, hereby declare and state as follows:

1. I am President and Chief Executive Officer of Word of God Fellowship, Incorporated d.b.a. Daystar Television Network also known as Community Television Educators of Orange County, Inc. ("**Daystar**"), the Petitioner in the above-captioned proceeding. The facts described below are personally known to me and if called upon as a witness I would testify as follows:

2. On Friday, April 9, 2004 at about 6:00 p.m., I received a copy of KOCE Foundation's (the "**Foundation**") Supplemental Opposition to Petition for Writ of Mandate. The facts alleged set forth therein are false, misleading and disingenuous. The true facts are as follows:

3. The FCC rules and regulations for non-commercial, educational television stations like the Foundation are not exactly the same as they are for Public Interest Obligation ("**PIO**") channels on DISH Network that the Foundation cited.

4. Daystar is a responsible bidder because we own and operate eight non-commercial, educational television stations and two PIO Satellite Channels. Thus, we have passed the FCC's muster in this area many times.

5. Daystar has owned and operated non-commercial, educational TV Stations since July 1997, almost seven years, and the FCC has never ruled against Daystar.

6. The charges and accusations that the Foundation cited were made by a jealous competitor, Dominion Sky Angel ("**Dominion**") who is enraged because they lost their case against us at the Tenth Circuit U.S. Court Of Appeals in January. Dominion is also mad because Daystar filed an action against them called a 403 inquiry at the FCC. In addition, they are mad because the National Religious Broadcasters Association sided with Daystar and turned down Dominion's application for membership because of Dominion's unfounded attacks on Daystar.

7. Daystar operates about forty television stations, only eight are non-commercial, educational. Dominion has tried to confuse the operations of our commercial stations with our non-commercial stations.

1 8. Dominion brought these unfounded charges about Daystar to the FCC in 2003.
2 Yet, the FCC, in January 2004, approved Daystar's purchase of a PBS non-commercial,
3 educational television station, KDTN-TV channel 2 in Dallas, Texas.

4 9. The Foundation's statement that Daystar is a commercial entity is false. Daystar
5 is a non-profit corporation, authorized by the IRS as a tax exempt 501 (c)(3) organization.
6 Daystar is operated as a non-commercial entity.

7 10. Daystar does have local programming at its stations that require local
8 programming.

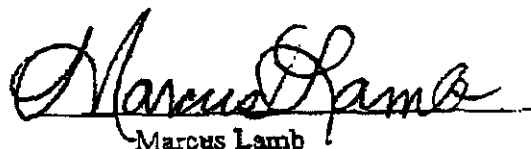
9 11. Daystar has already pledged to have a good amount of local programming for
10 KOCE.

11 12. The Must Carry Rights on EchoStar (DISH Network) are only about 8% of the
12 homes in the Southern California television market. Most of those homes who have DISH
13 network will still be able to pick up KOCE over the air, so no homes would be lost.

14 13. Daystar is a responsible bidder because the FCC has said in writing that religious
15 broadcasters and religious programming qualify for non-commercial, educational television
16 stations like KOCE.

17 14. Southern California is already well served by PBS and educational programming
18 through the dominant PBS station in the area, KCET. To the contrary, KOCE is the second PBS
19 station in the market and the lowest in ratings.

20 I declare under penalty of perjury under the laws of the State of California and the State
21 of Texas that the foregoing is true and correct. Executed this 12th day of April 2004 in Dallas,
22 Texas.

23
24 
25 Marcus Lamb
26
27
28



May 17, 2004

Robert Johnson, CEO
Dominion Sky Angel
3050 N. Horseshoe Dr.
Suite 290
Naples, Florida 34104

Dear Bob:

This letter is in response to your questions concerning NRB, as it relates to the sworn declaration of Marcus Lamb, dated April 12, 2004, presented to the Superior Court of the State of California. For the record, his entire comment regarding NRB is absolutely false. Frankly, I am stunned by his assertion, because as it states at the end of his declaration, he declares the statement to be true under penalty of perjury under the laws of the States of California and Texas.

To the point, NRB did not take sides with Daystar in the dispute you were in with each other. On this point, we were very clear with you and Marcus. NRB took no formal or informal position regarding the dispute. In fact, in a letter to you from our President, Dr. Frank Wright, dated October 3, 2003, he specifically stated that "NRB, as an association, has not taken any official position in this dispute." For Marcus to say that "National Religious Broadcasters sided with Daystar and turned down Dominion's application for membership because of Dominion's unfounded attacks on Daystar" is categorically untrue.

Regarding the point of your membership application, as you know, NRB took no formal action on that either, because in a letter from you to Dr. Wright dated October 2, 2003, you withdrew your application for NRB membership. I do not understand why Marcus would make such blatantly untrue statements, but it is my duty and responsibility to set the record straight.

If there is any further clarification needed, please do not hesitate to contact me.

Cordially,


Glenn R. Plummer
Chairman & CEO

cc: Dr. Frank Wright
Marcus Lamb

National

Religious

Broadcasters

9510 Technology Drive

Manassas, Virginia 20119

Phone: 703-330-7000

Fax: 703-330-7100

Capitol Hill Office

119 C Street SE

Washington, DC 20003

Phone: 202-543-0673

www.nrb.org

info@nrb.org

Christian

Communicators

Impacting

the World

May 17, 2004

Marcus Lamb
Daystar Television Network
3901 Highway 121, South
Bedford, Texas 76021



Dear Marcus:

I was recently contacted by Bob Johnson of Sky Angel, requesting clarification from me, on a written statement you made, dated April 12, 2004, with the Superior Court of the State of California regarding NRB. Your sworn declaration under penalty of perjury with the States of California and Texas says the following: *"The National Religious Broadcasters Association sided with Daystar and turned down Dominion's application for membership because of Dominion's unfounded attacks on Daystar."*

Your statement stuns me because it is categorically untrue. I am at a complete loss regarding what you could possibly base such a statement on. You were well aware that NRB took no formal or informal position, nor did we take sides on the dispute you had with Sky Angel. Furthermore, in a letter from me to you a year ago, I asked you to immediately retract an erroneous written statement you made about me (as NRB Chairman), dated May 28, 2003, where you said I was "in full agreement with Daystar's position." The fact is, I was not in full agreement with Daystar's position, and demanded that you immediately send out a written correction or retraction, which (to your credit) you did.

Regarding your most recent false assertion, however, please be advised that NRB did not turn down Dominion's application for membership. Before NRB had the opportunity to complete the processing of Dominion's membership application, they withdrew their application.

Once again, NRB chooses not to side with either of you concerning your dispute, however, we would strongly suggest that you correct the inaccurate statements you made on the record regarding NRB. Marcus, please know that it pains and saddens me to have to take such a firm corrective posture with you, but for the sake of truth, and the integrity of NRB, we ask you to cease and desist from making any further false or inaccurate statements regarding the National Religious Broadcasters.

Thank you for your understanding in this matter.

Respectfully,


Glenn R. Plummer
Chairman & CEO

cc: Dr. Frank Wright, NRB President
Robert Johnson, CEO Dominion ✓

EXHIBIT 3

AFFIDAVIT OF KATHLEEN L. JOHNSON

AFFIDAVIT OF KATHLEEN L. JOHNSON

I, Kathleen Johnson, first being duly sworn, depose and state:

1. I am over the age of 18 and make the following statements based on my personal knowledge.
2. I am the Vice President of Programming at Dominion Video Satellite, Inc. ("Dominion") and have held that position for six years. Prior to Dominion, I was a television news producer and received numerous journalism awards including four EMMY Awards and an Edward R. Murrow award.
3. In my current position, I oversee 36 Christian TV and radio channels carried on Dominion's satellite system and interact with both the Christian and secular media communities, including programmers, TV and radio networks, and multi-channel program providers.
4. I am aware of the FCC broadcast licenses held by most Christian television stations around the nation; most Christian television stations have commercial station licenses which allow them to fundraise for other causes and sell program and commercial time.
5. On June 15, 2004, I talked with Valerie Saxion of Silver Creek Labs regarding her health product company and general appearances on television and whether she would be producing an educational health program in the future.
6. Ms. Saxion stated that she is a Christian health expert and that Silver Creek Labs is a for-profit company that sells health books and natural health supplements.

7. Ms. Saxion stated that she does not have her own program but often appears on the programs produced by Christian television stations in order to communicate her message of good health through nutrition. During those appearances she occasionally sells health products for her for-profit company.

8. Ms. Saxion volunteered that she has appeared on programs produced by Daystar Television, has sold her products on Daystar Television, Daystar Television airs the phone number for her for-profit health company during those appearances, and she has a revenue sharing agreement with Daystar Television by which Daystar Television receives 20% of the proceeds for the sale of her products to those viewers who call.

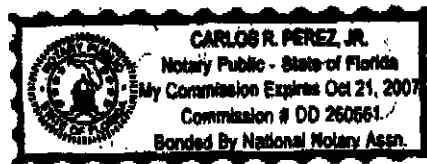
9. Ms. Saxion also stated that Daystar Television had recently contacted her to inform her that a program that she taped with Daystar co-founder Joni Lamb, "Joni," would be re-airing in a few days, Friday, June 18, 2004 and would be repeated a total of four times on Daystar Television.

10. I taped the June 18, 2004 "Joni" program broadcast by Daystar on its DISH Network public interest channel and found that Ms. Saxion's statements were accurate; she did appear on the entire program, there was a phone number for her for-profit health company on the screen so that viewers could purchase products, and there was a commercial within the program using several "call to action" words.

11. Daystar's web site at www.daystar.com indicates that the "Joni" program is produced by Daystar and is hosted by Daystar co-founder Joni Lamb. The web site also indicates that "Joni" airs on all of Daystar's outlets including all non-commercial/educational stations and public interest channels on DISH Network and DirecTV.

12. On June 16, 2004, I talked with personnel in the Paula White Ministries' "customer service department" (877-669-2557) after viewing Valerie Saxion promoting her health products on the "Paula White" program on Daystar Television; the products were not promoted on the program as a gift for a donation. I asked Paula White Ministries personnel if the Valerie Saxion products were tax-deductible in any way, minus the cost of the product. Paula White Ministries stated that the products were not tax deductible.

13. On February 25, 2004, I purchased from Paula White Ministries a make-up book promoted on the "Paula White" program. I asked Paula White Ministries if the purchase price minus the cost of the product was tax-deductible, and they indicated, if it were tax-deductible, the amount I could deduct would be located on the receipt that I would receive with the book in the mail. The receipt I received had a section on it where a tax-deductible amount would be located, if applicable; on this order the receipt indicated no amount was tax-deductible.




Kathleen Johnson

Affiant:
July 9th, 2004

Subscribed and Sworn to Before me
This 9th day of July, 2004


Notary Public

PAULA WHITE MINISTRIES INVOICE

PAULA WHITE MINISTRIES

PO Box 25151
Tampa, FL 33633-1362

PACKING SLIP

Sold To:

Ship To:

Cathy Johnson
PO Box 11036
Naples FL 34104

Cathy Johnson
PO Box 11036
Naples FL 34104

2/25/2004		134047		191413
</				

*** THANK YOU FOR YOUR ORDER ***

Product Total:	39.95
Order Discount:	0.00
Tax:	0.00
Shipping/Handling:	4.00
*** TOTAL ORDER ***	43.95
Total Paid:	43.95
Gift Amount:	0.00
Balance Due:	0.00

EXHIBIT 5

**JONI
JUNE 18, 2004**

EXHIBIT 6

**PAULA WHITE TODAY
JUNE 13, 2004**